

**PART 5333—PROTESTS, DISPUTES, AND APPEALS****TABLE OF CONTENTS**

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PART 5333—PROTESTS, DISPUTES, AND APPEALS

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**PART 5333—PROTESTS, DISPUTES, AND APPEALS****SUBPART 5333.1—PROTESTS****5333.102 General.**

Air Force personnel should seek to resolve all protests at the lowest possible level regardless of the level at which the protest is initially lodged. When notified of a protest, the contracting activity shall immediately contact the protester to make sure the basis of the protest is fully understood, thoroughly consider its merits, and take appropriate action. Throughout the protest, frank and open discussions with the protester are encouraged. A candid explanation of the reasons for our contracting decisions and actions can frequently satisfy the protester's concerns and result in withdrawal of the protest. A decision to deny a protest shall be made at a level no lower than that at which the protest was lodged.

**5333.103-90 Protests to the agency.**

(a) Air Force personnel shall use the procedures in FAR Subpart 33.1 and shall consider, where appropriate, the rules and prior decisions of the Comptroller General when deciding agency level protests, including those on nonappropriated funds procurements.

(b) The MAJCOM may, with the concurrence of the cognizant staff judge advocate, deny protests lodged at or below the MAJCOM level. This authority may be redelegated to field activities. However, for protests that involve policy implications not fully covered by regulation or that have significant congressional interest, the MAJCOM shall request guidance from SAF/AQCX. Protests may be sustained at any level in the review process, with the concurrence of the cognizant staff judge advocate.

(c) The decision authority shall respond to the protester in writing, answering completely all protest allegations. For protests before award, the contracting activity shall not award a contract until the decision is sent to the protester. For protests submitted above the MAJCOM level, SAF/AQCX will notify the contracting officer when a decision is issued.

(d) When protests are lodged above the MAJCOM level, SAF/AQCX will normally request a protest file from the MAJCOM, prepared in accordance with FAR 33.104 (a)(3), modified appropriately. SAF/AQCX, in consultation with SAF/GCQ, shall prepare an Air Force decision on the protest.

**5333.104-90 Protests to GAO.**

(a) *General procedures.*

(1) *Notice of GAO protests.*

SAF/AQCX will notify the appropriate field activity and MAJCOM when a protest has been lodged with GAO. The contracting officer shall:

(i) Immediately notify the local staff judge advocate and begin preparing the agency report;

(ii) Give notice as required in FAR 33.104 (a)(2) and include a copy of any interested party response received in the agency report. Provide a copy of the protest to the interested parties with the notice unless the protester states that it contains confidential information;

(iii) Immediately contact SAF/AQCX if the contracting officer or cognizant staff judge advocate believes that the Air Force should request summary dismissal of a protest. GAO will summarily dismiss a protest that on its face is clearly without legal merit, is untimely, fails to state the detailed grounds for protest, or involves a matter that GAO does not consider. In such cases, GAO will not require the submission of an agency report. If GAO learns of the basis of dismissal from information provided by the Air Force after the protest is filed, GAO will dismiss the protest at that time. The contracting officer or staff judge advocate shall then provide or prepare documents requested by SAF/AQCX or SAF/GCQ to support the request. SAF/AQCX or SAF/GCQ may authorize the field activity to delay preparation of the agency report pending a ruling by GAO; and

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(iv) Direct all status requests or questions on protests pending at GAO to SAF/AQCX. Contracting officers shall not contact the GAO directly unless directed to do so by SAF/AQCX or SAF/GCQ.

(2) *Agency reports.*

(i) *Transmittal of agency reports.*

(A) The contracting activity shall transmit the agency report using Express Mail or overnight delivery so that SAF/AQCX will receive it not later than 15 calendar days after the contracting activity is notified of the protest. Except for AFMC, the MAJCOM shall submit its recommendations and comments, including those of the MAJCOM staff judge advocate, so that they are received by SAF/AQCX not later than five calendar days after the contracting activity submits the agency report. If GAO uses the express option procedures, SAF/AQCX must receive the agency report within seven calendar days from the date the express option is invoked and, except for AFMC, must receive MAJCOM comments and recommendations within two calendar days thereafter.

(B) The contracting officer shall forward the agency report, including all copies, to SAF/AQCX with a letter of transmittal signed by the chief or deputy chief of the contracting activity, or AFMC's designated official, which shall:

- (I) Identify the protester and the GAO assigned protest number in the subject;
- (II) Briefly describe the requirement and give the status of contract award. If award has been made, state if performance has commenced, shipment or delivery has been made, or a stop work order has been issued;
- (III) Identify the name and telephone number of the point of contact in both the contracting office and the legal office; and
- (IV) State actions taken to resolve the protest and any further action contemplated.

(ii) *Format of agency reports.*

(A) The contracting officer shall prepare the agency report as a stand-alone report that can be submitted "as is" to the GAO. The copies of the agency report for the protester and each interested party shall also be stand-alone reports, ready to be submitted by SAF/AQCX or SAF/GCQ "as is" to each party.

(B) Organize agency reports as follows:

- (I) Include true, legible, and complete copies of the original documents to include interested party comments in chronological order, earliest first, bound on the left margin, numbered, tabbed, and indexed. The copy for the GAO shall be in loose-leaf, three-ring binders;
- (II) Number documents using whole arabic numerals (with no letters, decimals, or fractions) and continuous from one binder to the next, so that the complete agency report will consist of one set of consecutively numbered documents; and
- (III) The table of contents should include the date and a brief description of each document, and shall indicate which documents are being provided to the GAO, the protester, and each interested party.

(C) Include the memorandum of law, the contracting officer's statement of facts, and the protest at Tabs 1, 2, and 3, respectively. Reference all other relevant documents in the memorandum of law or in the contracting officer's statement.

(iii) *Copies of agency reports.*

(A) The contracting officer shall provide to SAF/AQCX a complete copy of the agency report for transmittal to the GAO and separate copies for SAF/AQCX or SAF/GCQ, the protester, and each interested party which responded to the notice of protest (see 5333.104-90 (a)(4)). Label each copy with the identity and address of the appropriate party.

(B) Except as provided in (C) below, the contracting officer shall include, in the copies to be provided to the protester and interested parties, a complete copy of each document being provided to the GAO and a redacted copy of documents which may be partially withheld. Include the complete copy and the redacted copy under the same tab. If

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a protective order is not issued for the protest, SAF/AQCX or SAF/GCQ will remove the documents which are not to be released from the copies of the agency reports for the protester and interested parties.

(C) Documents in the agency report being provided to the GAO that are known to be in the possession of the protester or an interested party (e.g., the solicitation) need not be reproduced and included in the agency report for the protester or interested party. The table of contents for the agency report shall indicate which documents are not being provided because the party already has a copy.

(D) SAF/AQCX and SAF/GCQ addresses, telephone and FAX numbers are:

SAF/AQCX—See Foreword for mailing address  
Telephone (703) 614-4877  
FAX (703) 693-5589

Department of the Air Force  
Office of the Assistant General Counsel for Acquisition (SAF/GCQ), Room 4D980  
1740 Air Force Pentagon  
Washington, DC 20330-1740  
Telephone (703) 697-3900  
FAX (703) 614-8846

(iv) *Contracting officer's statement of facts.*

(A) The contracting officer's statement of facts shall include a chronology of events and a discussion of all issues raised in the protest. The chronology of events will include the date and a brief description of significant events in the procurement. The discussion of allegations shall address all issues raised in the protest. Conclusions shall be supported by appropriate references to the FAR and supporting documents (by tab number) in the agency report.

(B) The contracting officer's statements of facts should be written so that it contains only releasable information. If there is any information that must be withheld from the protester or an interested party, it should be provided in a supplemental statement. If deletions are minimal, a redacted statement for the appropriate parties may be provided instead. The contracting officer's statement of facts should include information such as the following:

- (I) Type solicitation protested (i.e., IFB, RFP, etc.);
- (II) Solicitation number and date issued;
- (III) Description of goods or services being acquired;
- (IV) Name of contracting office;
- (V) Description of decision protested;
- (VI) Date bids or proposals originally due;
- (VII) Date best and final offer (BAFO) requested;
- (VIII) Date BAFO received;
- (IX) Date of award;
- (X) Successful contractor, if known;
- (XI) Amount of contract, as awarded and with options;
- (XII) Amount protester bid for basic contract and options;
- (XIII) Specific language in solicitation to which exception is taken;
- (XIV) Abstract of relevant language from other documents referenced by protester or relied on by the Air Force;
- (XV) Verbal communications, if any, alleged by the protester or relied on by the Air Force, emphasizing any disputed verbal statements; and

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(XVI) Other significant facts alleged by the protester or relied on by the Air Force with a particular emphasis on disputed facts.

(v) *Memorandum of Law.*

(A) The staff judge advocate shall provide a memorandum of law in opposition to the protest, to be included as an advocacy document in the agency report. The memorandum should be prepared in anticipation of its release to the GAO and to interested parties to the protest. Any information that must be withheld from the protester or an interested party, should be included in a supplemental memorandum for the GAO. If deletions are minimal, a redacted memorandum for the appropriate parties may be provided instead. The memorandum of law shall:

- (I) Include the pertinent facts;
- (II) Identify the legal issues raised by the protest;
- (III) State the legal rules enunciated by the GAO and the Courts when resolving the same or similar issues and analyze how those rules apply to the facts and issues of the protest; and
- (IV) Briefly state the desired result.

(B) The statement of facts in the memorandum of law should tell the GAO what the procurement is all about, and how the protest relates in time to the actions of the buying activity and the offerors, as well as explain the agency position. The memorandum of law should, for the most part, read like a GAO decision and contain the necessary citations to protest decisions.

(C) If there is a reasonable possibility that the GAO may sustain the protest, the staff judge advocate shall prepare a legal opinion containing a candid, objective assessment of the merits of the protest. This opinion and any other written advice or comments by the staff judge advocate to the contracting officer about the protest shall not be made a part of the agency report but shall be forwarded with the report to SAF/AQCX. These documents will not be provided to the GAO or released outside of the Air Force without the consent of the staff judge advocate or higher authority.

(3) *Document requests.*

(i) A protester may request, in writing, concurrent with the filing of the protest, specific documents relevant to the protest, including documents not normally required to be included in the agency report.

(ii) Copies of all documents requested by the protester must be furnished to the GAO. Relevant, responsive documents should be integrated into the agency report. Irrelevant documents should be segregated, identified, and appended to the copy of the agency report to be provided to the GAO and SAF/AQCX.

(iii) The agency report shall clearly indicate whether documents responsive to a document request exist and, if so, which documents are responsive to which part of the request.

(iv) The protester may subsequently request additional documents if the existence or relevance of documents first becomes evident from the agency report, by filing a request with the GAO and the contracting agency within two calendar days of the receipt of the agency report. SAF/AQCX or SAF/GCQ must file the documents with the GAO within five calendar days, identifying any documents not furnished to the protester or interested party and stating the reasons for not furnishing them. These documents must be given to anyone granted access to them by a protective order. Therefore, the contracting officer shall provide all requested additional documents to SAF/AQCX within three calendar days of receipt of the protester's request.

(4) *Release of information.*

(i) *General.*

(A) SAF/AQCX or SAF/GCQ submit agency reports to the GAO, the protester, and interested parties. Contracting activities shall not provide agency reports, or documents in agency reports, directly to the GAO, the protester, or interested parties, unless requested to do so by SAF/AQCX or SAF/GCQ. Contracting activities shall provide additional documents to SAF/AQCX or SAF/GCQ, upon request.

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(B) The authority of the Freedom of Information Act (FOIA) does not apply when preparing agency reports for transmittal to the GAO and interested parties. However, the exemptions in FOIA may be used as a basis to recommend withholding or releasing documents or portions of documents. For documents in the agency report that may be non-releasable, in whole or in part, under the (FOIA), the contracting officer shall identify the specific parts of the documents that would be exempt under FOIA, the applicable FOIA exemptions, and explain why those parts should not be released.

(C) Within five calendar days of receipt of the agency report (or the Air Force's response to a protester's request for additional documents), the GAO must notify the Air Force whether any documents being withheld should be released to the protester or an interested party. If the GAO determines that withheld documents should be released, it will furnish the documents to the protester or interested party or advise the Air Force to do so. If advised by the GAO to do so, SAF/AQCX or SAF/GCQ will release the documents or notify the GAO that it does not agree with the GAO determination.

(ii) *Protective orders.* If the GAO issues a protective order, SAF/GCQ will represent the Air Force in the protest.

(iii) *Releasability determinations.*

(A) Entire documents should not be withheld from a protester or interested party unless all information within the document should be withheld.

(B) Information readily available to all offerors should not be withheld.

(C) Information which the Government is not precluded by law from releasing (even though it may fall within one of the FOIA exemptions) should not be withheld if it would tend to explain the award decision or the adverse action taken with respect to the offeror's proposal.

(D) Commercial or financial information submitted in confidence to the Government must be withheld from any protester or interested party, other than the one that submitted it.

(E) Government negotiation or evaluation information may be released to the protester or an interested party, if its release would not harm the Government in future acquisitions. For example:

(I) Final ratings, strengths, weaknesses, risk evaluations, and final composite scores will generally not be withheld from the company whose proposal is being evaluated as they tend to explain the Government's decision;

(II) Individual evaluator ratings, scores, analyses, worksheets, identities, and interim ratings generally will be withheld as they tend not to be relevant or the release would be harmful to the deliberative process;

(III) Those portions of the Proposal Analysis Report that relate to a protester's evaluation should generally be provided to the protester; and

(IV) See AFFARS Appendix AA-403 for guidance concerning information related to a source selection.

(iv) *Document Release Memorandum.*

(A) Documents that will not be furnished in their entirety to the protester or to an interested party in response to the protester's document request must be identified and the reason for not furnishing the documents stated in a memorandum.

(B) This memorandum shall be included in the agency report to explain the legal and factual basis for not furnishing to a protester or interested party any document, or portion of a document, which is being furnished to the GAO. The contracting officer prepares it with assistance from the staff judge advocate.

(b) *Protests before award.*

(1) *Authorization requests.*

(A) Except for AFMC Major, Selected, and Other Programs, requests to authorize contract award shall be signed by a general officer/senior executive service civilian or, if not available, by the installation commander or deputy and forwarded to the MAJCOM. If the MAJCOM concurs with the request, the MAJCOM staff officer responsible for contracting shall forward it to SAF/AQC through SAF/AQCX. The request shall be accompanied by the agency re-

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port unless the report has been previously sent to SAF/AQCX or SAF/AQCX has agreed to alternate arrangements. For AFMC Major, Selected, and Other Programs, requests will be forwarded to SAF/AQC through SAF/AQCX in accordance with AFMC procedures.

(B) All requests shall include facts that establish the urgent and compelling circumstances which significantly affect the interests of the United States. The request will include the proposed written finding required in FAR 33.104 (b) and shall be prepared as a stand-alone document containing the same information contained in the authorization request. Requests will be transmitted in a manner to ensure their receipt by SAF/AQCX at least ten calendar days before the date contract award is required. The request will also include the following:

- (I) A description of the goods or services requested and the type of contract contemplated;
- (II) A concise summary of the protest and the Air Force position;
- (III) The required award date and the reasons award is required by that date;
- (IV) A statement of the impact on the Air Force if award is delayed 30, 60, or 90 days beyond the required award date specified;
- (V) A description of alternative methods for obtaining the required supplies or services (e.g., options, organic capabilities, purchase orders), including a detailed explanation of why such alternatives are not feasible;
- (VI) An estimate of termination costs if the protest is sustained and the contract terminated 30, 60, or 90 days after award; and
- (VII) The name and telephone number of any point of contact at SAF or HQ USAF who knows the impact of delay in contract award.

(C) After reviewing a request to authorize award, SAF/AQC may request a briefing on technical and contractual aspects of the solicitation. The briefing shall be provided by representatives who can fully support and justify the request. If the contract is for Other Contracting (see 5302.101), upon completion of the reviews and in consultation with SAF/GCQ, SAF/AQC will notify the MAJCOM whether the HCA may authorize award. If the contract is for a Major, Selected, or Other Program (see 5302.101), requests to authorize award will be approved by SAF/AQ, as HCA.

(2) *Notice to GAO.*

(A) *For Other Contracting.* After receiving SAF/AQC approval to award, the HCA may authorize award, and if so, shall transmit the notice required in FAR 33.104 (b)(2) (but not the finding itself) to the GAO before award is made. The completed finding shall be returned to the contracting officer for inclusion in the contract file. Forward the notice, including the protester's name and B-number assigned to the protest to:

The Office of the General Counsel  
U.S. General Accounting Office  
441 G Street N.W.  
Washington, DC 20548  
Attn: Procurement Law Control Group

The contracting office shall provide a copy of the notice to SAF/AQCX.

(B) *For Major, Selected, and Other Programs.* SAF/AQCX will prepare and transmit the notice of the finding in FAR 33.104 (b)(2).

(c) *Protests after award.*

(1) When the Air Force receives notice of a protest from the GAO within ten calendar days after the date of contract award or five calendar days after the debriefing date, whichever is later, the contracting officer shall decide whether to suspend performance, terminate the contract, or request authority to continue contract performance.

(2) Requests to continue contract performance shall be signed by a general officer/senior executive service civilian. If one is not available, the installation commander or deputy may sign the request. The request shall be forwarded to the MAJCOM for review and presentation to the cognizant HCA as defined in 5301.601-91 for approval. The request shall



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include a proposed written finding fully justifying the need for continued performance. The HCA, on a nondelegable basis, shall decide within five calendar days after protest notification by SAF/AQCX whether to authorize continued performance. When SAF/AQ is the HCA, requests for authority to continue performance will be submitted to SAF/AQCX within four calendar days of protest notification and will be accompanied by the proposed agency report unless the report has been previously submitted to SAF/AQCX or SAF/AQCX has agreed to alternate arrangements. If the contracting officer does not request continued performance authority, contract performance shall cease immediately. If a request is initiated and the HCA does not authorize continued performance within five calendar days of protest notification, the contracting officer shall suspend contract performance. If circumstances change after suspension of contract performance, the contracting officer may initiate a request to continue performance. MAJCOM, as referred to in this paragraph, excludes AFMC if the request involves a Major, Selected, or Other Program.

(3) When authorizing continued contract performance, the HCA must first send a notice to the GAO of the finding (but not necessarily the finding itself), then sign and return the finding to the contracting officer. Forward the notice to the GAO and a copy to SAF/AQCX.

(e) *Hearings.*

(1) SAF/GCQ will represent the Air Force on any protest involving a hearing. When appropriate, the local staff judge advocate who prepared the memorandum of law will assist SAF/GCQ at the hearing.

(2) The contracting activity, local staff judge advocate, and responsible MAJCOM shall provide the requested witnesses and other support required by SAF/GCQ. SAF/GCQ will submit Air Force comments on the hearing to GAO. The contracting officer shall produce additional information, as necessary, for SAF/GCQ to provide comments.

(g) *Notice to GAO.*

For Other Contracting, the HCA shall advise SAF/AQCX in writing with any recommendation not to comply with a GAO decision within 30 calendar days of the date of the decision.

**5333.105-90 Protests to GSBCA.**

(a) *General.*

(1)(i) The Office of the Assistant General Counsel for Acquisition (SAF/GCQ) will represent the Air Force on all protests filed with the GSBCA (Board). The contracting officer and the cognizant staff judge advocate shall provide direct support to SAF/GCQ on all matters before the GSBCA. Cases before the GSBCA will be decided based upon evidence presented at a hearing or a submission on the record. Hearings will be held at the time and place ordered by the Board and will be scheduled at the discretion of the Board, unless all parties elect to submit the matter on the record.

(ii) Upon receipt of a protest to the GSBCA, the contracting officer shall immediately, by the most expeditious means available, provide a copy of the protest to the local staff judge advocate, SAF/AQCX, HQ USAF/SC, and SAF/GCQ. At the same time, the contracting officer shall notify SAF/GCQ by telephone of the name and telephone number of the staff judge advocate that will assist the contracting officer with the protest.

(iii) SAF/GCQ may be contacted as follows:

*Telephone:*

(703) 697-3900 or (703) 697-7693  
DSN 227-3900 or 224-5205

*FAX:*

(703) 614-8846  
DSN 224-8846

*Mail Delivery:*

SAF/GCQ  
1740 Air Force Pentagon  
Washington, DC 20330-1740

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The following should be prominently displayed in capital letters in the lower left corner:

PRIORITY: GSBICA PROTEST  
ATTN: ASSISTANT GENERAL COUNSEL  
ROOM 4D980/TEL (703) 697-3900

(2) The contracting officer shall forward a copy of the written confirmation and listing of those notified to SAF/GCQ at the same time that it is provided to the Board.

(b) *Protest file.* The contracting officer shall obtain the assistance of the staff judge advocate in preparing the protest file. No documents should be created for the file. Any affidavits or statements of witnesses deemed necessary on the matter under protest shall be prepared in consultation with SAF/GCQ.

(1) The file shall be organized in accordance with the GSBICA rules, as follows: protest file exhibits may be originals or true, legible, and complete copies; they shall be arranged in chronological order within each submission, earliest documents first, bound on the left margin (except where size or shape makes such binding impracticable), numbered, tabbed, and indexed; the numbering shall be consecutive, in whole arabic numerals (no letters, decimals, or fractions), and continuous from one submission to the next, so that the complete file, after all submissions, will consist of one set of consecutively numbered exhibits; and the index should include the date and a brief description of each exhibit and shall indicate which exhibits, if any, have been filed with the Board *in camera* or otherwise not served on every other party.

(2) After obtaining staff judge advocate review of the file, the contracting officer shall provide to SAF/GCQ three copies of the file as well as any additional copies requested by SAF/GCQ. The contracting officer shall not provide the file directly to the Board, unless directed to do so by SAF/GCQ. Unless otherwise directed by SAF/GCQ, the copies shall be transmitted in a manner to ensure their receipt within seven work days from the date the protest is filed.

(c) *Answer to protest.* The contracting officer, with the assistance of the staff judge advocate, shall provide to SAF/GCQ, to arrive at the same time as the copy of the protest file, information sufficient to draft an answer and any other appropriate pleadings. Information sufficient to file an answer must be provided, even though other pleadings are deemed appropriate. All dispositive motions must be filed at the time the answer is filed. These would include motions to dismiss for failure to state a valid basis for protest, for untimeliness, and for lack of jurisdiction. Information submitted in support of a motion should include a memorandum of law prepared by the staff judge advocate. SAF/GCQ will file the answer and other appropriate pleadings with the Board.

(d) *Suspension hearing.* When notified that a suspension hearing has been requested, the contracting officer shall identify and notify SAF/GCQ of appropriate officials who would be available to testify at the hearing or provide affidavits if the matter is to be submitted on the record for a decision without a hearing. Testimony or affidavits concerning “urgent and compelling circumstances which significantly affect interests of the United States” may be made by an official no lower than a general officer of the requiring activity or, if a general officer is not available, the installation commander or deputy.

(e) *Hearing on the merits.* The contracting officer shall identify and notify SAF/GCQ of appropriate officials who would be available to testify at the hearing, when scheduled, or provide affidavits if the matter is to be submitted on the record for a decision without a hearing. Decisions to award before a resolution on the merits, unless precluded by a GSA suspension of authority, shall be approved in accordance with 5333.104-90 (b)(2) except that they shall also be supported by an affidavit showing “urgent and compelling reasons” as required in 5333.105-90 (d). Any decision to suspend performance after award shall be made in consultation with SAF/GCQ.

(f) *Costs.* The contracting officer will be advised by SAF/GCQ how any award of costs will be satisfied.

(g) *GSBICA address.* The written confirmation and listing required in 5333.105-90 (a)(2) and the appeal file required by 5333.105-90 (b)(2) shall be sent to the Board at:

Board of Contract Appeals  
General Services Administration  
Room 7022, 18th & F Streets, N.W.  
Washington, DC 20405  
ATTN: Clerk of the Board

**SUBPART 5333.2—DISPUTES AND APPEALS**

**5333.207 Contractor certification.**

If a contractor submits an uncertified claim exceeding \$50,000, the contracting officer shall notify the contractor, in writing, of its failure to certify as required by the Contract Disputes Act (41 U.S.C. 601-613). The notice should state that a final decision will not be issued until the claim is certified.

**5333.211 Contracting officer's decision.**

(a) Except as provided in 5333.211 (b), the contracting officer shall refer proposed final decisions, with a complete contract file, to AFMC LO/JAB, 2240 B Street, Room C1, Wright-Patterson AFB, OH 45433-7112, (513) 255-6111 ext. 252, (513) 255-3204, DSN 785-6111 ext. 252, or DSN 785-3204, for review before sending the decision to the contractor.

(b) Final decisions on claims of \$50,000 or less, and on terminations for default with estimated excess procurement costs of \$50,000 or less, do not require AFMC LO/JAB review, provided the local staff judge advocate has reviewed and concurred with the final decision. However, any proposed final decision, regardless of dollar value, may be sent to AFMC LO/JAB for review if either the contracting officer or the local staff judge advocate determines that AFMC LO/JAB review is desirable.

(c) Telephone coordination of final decisions with AFMC LO/JAB is permitted when there is a genuine need for expedited review and when the case is simple, non-controversial, and unlikely to be appealed. Both the contracting officer and the local staff judge advocate should be on the line to discuss the case with AFMC LO/JAB.

**5333.290 Appeals.**

(a) *Appeals to the Armed Services Board of Contract Appeals (ASBCA).*

(1) The staff judge advocate, HQ AFMC, represents the Air Force before the ASBCA and has delegated this authority to the Director of Contract Appeals, Air Force Materiel Command Contract Law Center (AFMC LO/JAB). Contracting officers shall send a copy of any notice of an appeal to the ASBCA to AFMC LO/JAB with the envelope in which the notice was received. If the contractor files an appeal with the contracting officer instead of the ASBCA, the contracting officer shall immediately note the date on which the appeal was received and forward the appeal to the ASBCA along with the envelope in which the appeal was sent, and copies of both shall be sent to AFMC LO/JAB.

(2) Upon learning of an appeal to the ASBCA, the contracting officer shall comply with Rule 4 of the ASBCA Rules (see DFARS Appendix A, Part 2). In assembling the file of documents under Rule 4 (i.e., Rule 4 file), the contracting officer shall not include any legal opinions or intragovernmental or intergovernmental documents of the types described in AFI 37-131, Freedom of Information Act; AFI 37-132, Privacy Act; and DFARS Subpart 224.2 without having first obtained concurrence of AFMC LO/JAB. The contracting officer shall transmit any questions concerning whether or not a particular document should be included in the Rule 4 file to AFMC LO/JAB for resolution prior to completing and forwarding the Rule 4 file. In assembling the Rule 4 file, the contracting officer shall separately tab and index each document. Prior to forwarding the Rule 4 file to the ASBCA (Recorder), the contractor, and AFMC LO/JAB, the contracting officer shall submit the file to the local staff judge advocate for review and approval to ensure completeness and to prevent accidental disclosure of privileged material. Thereafter, all three copies may be mailed concurrently. Contractors or their representatives shall not be given access to Government files or documents, other than the Rule 4 file, without specific approval of the assigned Air Force trial attorney.

(3) While an appeal is pending, the contracting officer shall render all assistance requested by the assigned Air Force trial attorney including, but not limited to, locating and arranging for the presence of all potential Government witnesses, and marshaling Government records and other required physical evidence for conferences and hearings necessary to defend or otherwise dispose of an appeal.

(b) Actions in the United States Claims Court. If the contracting officer receives notice that an action has been filed in the United States Claims Court, the contracting officer shall notify the local staff judge advocate. The contracting officer shall assist the staff judge advocate in preparing the litigation report. The contracting officer shall send AFMC LO/JAB a copy of all notices of appeal to the United States Claims Court. Thereafter, the contracting officer shall give assistance as requested by HQ USAF/JACL.

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